



August 2, 2000

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-2921

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137650.

The City of El Paso (the “city”) received a written request for all documents pertaining to complaints filed against a named city police officer. You contend that the requested records are excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. You have submitted to this office a representative sample of the records at issue.<sup>1</sup>

Because your section 552.103 claim is the most inclusive, we will address it first. You contend that all of the requested records are excepted from disclosure under section 552.103 of the Government Code because “the records relate to a pending criminal prosecution.” To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). In this instance, you have not established that the city is a party to the criminal litigation. Nor have you demonstrated that the state prosecutor wishes these documents to be withheld from the

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<sup>1</sup>In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

public. We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.103 in this instance. *See* Open Records Decision No. 469 (1987) and authorities cited therein. Accordingly, the city may not withhold any of the requested information pursuant to this exception. We therefore must address the applicability of the other exceptions to disclosure that you have raised.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You explain that one of the documents at issue consists of the city’s police department compilation of an individual’s criminal history. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, we agree that the city must withhold the criminal history information pursuant to section 552.101 in conjunction with the common law right of privacy.

You also contend that an individual’s driving record is excepted from public disclosure under section 552.130. Section 552.130(a)(1) of the Government Code requires the withholding of “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” We note, however, that individuals’ driving records are subject to required public disclosure. *See* Transp. Code § 521.046 (Department of Public Safety must provide to public individual’s driving record upon submittal of individual’s driver’s license number or full name and date of birth). We do not believe that information subject to statutory public access may properly be withheld from the public pursuant to section 552.130. On the other hand, we conclude that the city must withhold the individual’s driver’s license number pursuant to section 552.130(a)(1).

We also note that the records at issue contain individuals’ social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. It is not apparent to this office that the social security numbers contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis for concluding that

the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained nor are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

You next contend that information revealing an undercover police officer's work assignment is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) provides an exception for an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." We have reviewed your arguments for withholding the information at issue and conclude that you have established that the release of the information pertaining to the undercover officer's work assignment would interfere with law enforcement. The city may, therefore, withhold the information that we have marked pursuant to section 552.108(b)(1).

Section 552.117(2) of the Government Code requires the city to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We agree that the city must withhold the types of information protected under section 552.117(2).

To summarize, the city must withhold compilations of criminal history pursuant to section 552.101 of the Government Code. However, the driving history record contained in the records at issue must be released, with the individual's driver's license number redacted under section 552.130. The city must withhold individuals' social security numbers pursuant to section 552.101, but only if those numbers were obtained or maintained pursuant to a statute enacted on or after October 1, 1990. Work assignments of undercover police officers may be withheld pursuant to section 552.108. The home address, home telephone number, social security number, and family information of peace officers must be withheld from the public pursuant to section 552.117(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

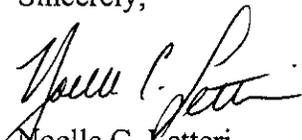
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/RWP/ljp

Ref: ID# 137650

Encl. Submitted documents

cc: Ms. Maria Elena Navarro  
Assistant Public Defender  
Office of the Public Defender  
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(w/o enclosures)